

INVESTIGATION UPDATE

City of Des Moines, October 10, 2019



TIMELINE

- June 2018: transitions and succession planning in Parks, Recreation and Senior Services (PRSS) Department with a number of impending high-level retirements.
- PRSS Department and Des Moines Legacy Foundation (DMLF) had a historically close relationship; City employees serving on the board of the Foundation and performing work for the Foundation while being paid by the City.
- Administration began review of job functions to ensure smooth transition.
- Red flags identified through staff observations as well as documents obtained.



CONCERNS OBSERVED:

- City staff were taking in cash and checks both on site at city facilities and at events (e.g. Arts Gala, Paint Night etc.) on behalf of DMLF without giving a receipt and without going through the City accounting system.
- In some cases DMLF cash/checks were brought from the event to City facilities to be held overnight without following cash handling protocols.
- This put City employees and the City at risk from improper handling of funds and is contrary to required internal financial controls.
- Revenue from City Memorial Bench Program being diverted to DMLF.



WRITTEN STATEMENTS IN SUCCESSION

NOTES BY FORMER EMPLOYEE

- “Any personal cash/check donations from a participant larger than \$50 should NOT GO TO THE CITY. Those donations should go to DMLF.”
- “WE strongly recommend that any estate funds be donated to the Des Moines Legacy Foundation rather than the City. The estate gets the tax donation write off and the funds are easier to spend and monitor than in the city budget.”
- “WE do lots of marketing to tell folks to leave estate funds to the DMLegacy Foundation, not the City!!!! The [redacted] funds are difficult to spend. It is a tax deductible donation to leave to DMLF, and let the foundation earn the interest.”



DUTY TO REPORT AND TAKE ACTION

- State agencies and local governments shall immediately report to the state auditor's office known or suspected loss of public funds or assets or other illegal activity. RCW 43.09.185.
 - Mandated by state law
 - Non-discretionary



TIMELINE

- June 11, 2018, formal investigation initiated based on staff observations as well as written statements in succession notes for Activity/Senior Center.
- June 11, 2018, Alvarez and Marsal (A&M) forensic accounting firm retained to conduct investigation. Based upon recommendation from Washington Cities Insurance Authority (WCIA).
- June 13, 2018, electronic files and paper files relevant to the investigation deleted and removed from City buildings.



VOICEMAIL - 2 DAYS AFTER INVESTIGATION INITIATED

“We got word that the City is planning on coming in here and confiscating everything about the Des Moines Legacy Foundation so I’m boxing like crazy.

Could you delete the scanned folder – Des Moines Legacy Foundation – on our copier please? I don’t know how to do that. Or if you’re not comfortable with that, could you please call me and tell me how to delete the Des Moines Legacy Foundation scanned folder.”

Transcript of voicemail left by former City employee/Legacy Boardmember
on IT Department Answering Machine

- June 13, 2018

The electronic public records were recovered almost immediately and were crucial to the investigation.



TIMELINE

- A&M investigation initiated June 2018.
- A&M investigation completed November 2018.
- Roughly 5 months.



FINDINGS OF INITIAL A&M REPORT

- “Despite requesting a considerable amount of information required to properly complete our assignment, we were not provided with much of the data that we requested from the DMLF.” (A&M p. 3, ¶ 2).
- “We consider this lack of documentation to rise to the level of a “scope restriction” in accordance with our professional standards.” (A&M p. 3, ¶ 3).



FINDINGS OF INITIAL A&M REPORT

- “We identified opportunities where funds and/or resources designated for the City could have been, and actually have been, misappropriated to the DMLF.” (A&M p. 3, ¶ 5).
- “Specifically, we have identified instances where donations that were made payable to the City were deposited into the DMLF’s bank account.” (A&M p. 3, ¶ 5(a)).
- Cited City Memorial Bench Program and Arts Commission funds as improperly held by DMLF. (A&M p. 4, ¶ 6(a-b)).
- Contrary to claim made by DMLF that “100 percent of funds raised has been or will be expended to directly support parks, recreation and senior services programs” the A&M report found that DMLF “has only expended....56.2 percent of total donations directly toward the City’s Parks, Recreation and Senior Services.”



EXAMPLES OF EVIDENCE CITED IN REPORT

DES MOINES LEGACY FOUNDATION
P.O. BOX 14676
SEATTLE, WA 98146-0676

DATE 1/18/18

KEYBANK NATIONAL ASSOCIATION
1-888-KEY4BIZ • Key.com

SYMBOL
CASH 1500.00

C 1
K 5
C 0
K 0
S 0

CHECK OR TOTAL FROM OTHER SIDE 1500.00

US \$

DATE 12-19-17

PAY TO THE ORDER OF City of Des Moines \$1500.00

One thousand five hundred and 00/100 DOLLARS

MEMORIAL BEACH

FD-100 (Rev. 10-1-90)
Des Moines, WA 98124-0750
800-233-2323 • 206-433-7700
www.fedex.org

DES MOINES LEGACY FOUNDATION
P.O. BOX 96678
SEATTLE, WA 98196-2978

DATE 7/6/16

EXPENSE MAY BE FOR EXCHANGE FOR RECEIPT OF THE PAYEE



KeyBank National Association
One Mohean, WA 98199
1-888-KEY4BIZ Key.com®
Fed Routing/Transit # 25160570

EXPENSE
CARD

C
R
E
C
K
S

CHECKS OR TOTAL
FROM OTHER SIDE

\$

375000

375000

DATE 7/16/16

15 2455 WA
0264

Pay to the order of Des Moines Parks

\$ 1500.00

Fifteen hundred dollar

Bank of America

Washington, D.C.

Valued Client Since 1992

Burch Donation

Signature

Print Name

DATE June 27, 2014

15 2455 WA
0264

Pay to the order of Des Moines Parks

\$ 1000.00

One thousand and no/100

DOLLARS

CHASE

Morgan Chase Bank, N.A.

Burch donation

Signature

Print Name



LAW ENFORCEMENT INVESTIGATION

- Independent criminal investigation began in November 2018.
- Met with King County Prosecutor Fraud Division.
- Referred to outside law enforcement agency for independent review.
- A King County Superior Court Judge issued a sealed Search Warrant based upon a finding of probable cause that criminal activity occurred.
- The search warrant was issued on February 1, 2019 for Legacy Foundation bank records held at two separate financial institutions.



LAW ENFORCEMENT INVESTIGATION

- The independent Law Enforcement Officials obtained these documents from the two financial institutions and reviewed financial records going back ten years, that included thousands of documents.
- Law enforcement also reviewed payments made from the DMLF accounts to former City employees and DMLF Boardmembers.
- Due to the volume of information obtained through the search warrant the criminal investigation concluded in May of 2019.
- The independent Law Enforcement Official referred the matter to the City Attorney for a criminal filing decision.



A&M FOLLOW UP REPORT

- A&M reviewed Police Report:
 - Identified 25 instances where checks made payable to the City were deposited into Legacy Foundation accounts.
 - Stated “DMLF continued to hold funds that should have been retained by the City.”
 - Stated “It is our opinion that a large percentage of funds received by the DMLF has not supported the City’s Parks, Recreation and Senior Services Department.”



SPECIAL PROSECUTOR

- In order to avoid appearance of conflict, City Attorney appointed a Special Prosecutor in April of 2019 to review and make a decision regarding filing criminal charges.
- Special Prosecutor reviewed the matter and requested a Detective conduct additional interviews.
- Detective requested the interviews with DMLF board members (including former city employees) who had knowledge of matters being investigated.
- The detective contacted individuals to schedule interviews and they all declined to participate.



MATTERS REVIEWED BY SPECIAL PROSECUTOR

- Theft/Loss of public funds.
 - Diversion of donations
 - City revenue from Memorial Bench Program diverted to Legacy Foundation
 - Arts Commission funds held by Legacy Foundation
- Payments to former City employees from the Legacy Foundation.
- Deletion of public records/removal of files from City buildings.



FINDINGS

- Although probable cause exists to believe crimes were committed, evidentiary issues would make proving charges “beyond a reasonable doubt” difficult.
- Therefore, the Special Prosecutor has not recommended criminal charges be filed at this time.
- Based on information currently available, criminal probe is now closed.



ADDITIONAL ACTIONS

- City is actively working with the State Auditor's Office to close out this matter.
- State Auditor requires restitution from DMLF of City funds in the amount of \$94,000.
- City has been in contact with attorney for DMLF and is awaiting a response.
- State Auditor requires the City take all action necessary to ensure that diverted funds are recovered.
- City's expectation is that restitution will be received and donations will be used for their intended purposes.
- Until restitution has been received, City has suspended all involvement with the Legacy Foundation.
- City looks forward to resolving this matter and moving forward for the benefit of the community.

